IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

GREGORY F. MARTINI,	:	APPEAL NO. C-070463 TRIAL NO. A-0510346
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY.*
WAYNE PERRONE	:	
and	:	
ABE HATEM,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Gregory Martini appeals the trial court's entry of summary judgment in favor of Wayne Perrone and Abe Hatem. We conclude that Martini's sole assignment of error does not have merit, and we therefore affirm the judgment of the trial court.

In 2001, Perrone and Hatem sued Martini ("the 2001 lawsuit"). According to the complaint for the 2001 lawsuit, Perrone claimed that Martini had induced him into purchasing $100,000 worth of common stock of LightTouch Vein and Laser ("initial common stock"). Perrone and Hatem also alleged that Martini had induced Perrone to purchase an additional $50,000 worth of common stock in 2000 ("additional common stock"). At the same time, Hatem was induced to purchase

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

stock for $37,500. Perrone and Hatem sought relief based on fraudulent inducement and promissory estoppel.

The 2001 lawsuit was tried before a jury. At the conclusion of the trial, the jury awarded damages of $50,000 to Perrone for the purchase of the additional common stock and $37,500 to Hatem for his purchase of common stock. The jury also awarded $800,000 in punitive damages. The jury rejected Perrone's claim that was related to the purchase of the initial common stock.

Following the verdict, the parties entered into a settlement agreement. In it, Martini agreed to pay $953,901.11 in exchange for a release of all of Perrone and Hatem's claims against him. The jury verdict was vacated.

A year after the settlement agreement was signed by the parties, Martini learned that, prior to the institution of the 2001 lawsuit, Perrone had transferred the common stock that he had initially purchased for $100,000 to the American Lung Association. On his federal tax returns for 2000, Perrone had claimed a charitable deduction of $539,100 for the transfer to the American Lung Association.

In 2005, Martini filed a lawsuit against Perrone and Hatem in which he alleged that they had fraudulently induced him into settling the case, because Perrone had misrepresented at trial that he stilled owned the initial common stock, and that the stock was worthless. Martini later amended his complaint to allege breach of contract as well as fraudulent inducement. The parties filed opposing motions for summary judgment. The trial court granted summary judgment to Perrone and Hatem and denied Martini's motion for summary judgment.

In his sole assignment of error, Martini now asserts that the trial court erred when it granted summary judgment to Perrone and Hatem and denied Martini's motion for summary judgment.

Summary judgment is proper when (1) there remains no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and with the evidence construed in favor of the party against whom the motion is made, that conclusion is adverse to that party.[2] We review the trial court's decision to grant summary judgment de novo.[3]

To survive the motion for summary judgment on his fraudulent-inducement claim, Martini had to show that Perrone and Hatem had knowingly made a false representation with intent to induce Martini's reliance on the representation, that Martini had justifiably relied upon the representation, and that injury was proximately caused by the reliance.[4] After construing the evidence in favor of Martini, we conclude that he did not establish a fraudulent-inducement claim.

Martini presented no evidence that Perrone and Hatem had knowingly misrepresented Perrone's ownership of the initial common stock. In his appellate brief, Martini acknowledges that Perrone's answers to questions posed at trial were worded such that he never testified that he still owned the initial common stock or that he had lost his first investment of $100,000. Instead, Martini focuses on a clause in the settlement agreement that states that "[Perrone and Hatem] represent and warrant that they, both individually and collectively, are the sole owner[s] of each and every action, cause of action, claim, and demand which gave rise to the Lawsuit and/or which [Perrone and Hatem], both individually and collectively, are releasing herein." But the statement in the settlement agreement, even in light of the transfer to the American Lung Association, was not a misrepresentation. The

[2] Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.
[3] *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 2000-Ohio-186, 738 N.E.2d 1243.
[4] *Metropolitan Life Ins. Co. v. Triskett Illinois, Inc.* (1994), 97 Ohio App.3d 228, 235, 646 N.E.2d 528.

statement referred to ownership of claims and causes of action, not common stock. Martini presented no evidence that either Perrone or Hatem had transferred his ownership of the claims raised in the 2001 lawsuit.

Even if Martini had presented sufficient evidence of a material misrepresentation on the part of Perrone and Hatem, his fraudulent-inducement claim would still have failed, as he did not demonstrate reliance on the alleged misrepresentation. The jury denied Perrone's claim based on the purchase of the initial common stock. There was no evidence that Martini had been induced into settling based on any misrepresentation about the claim that had been denied by the jury.

We conclude that the trial court properly granted summary judgment in favor of Perrone and Hatem on Martini's fraudulent-inducement claim. And because we have concluded that Martini did not present sufficient evidence of a material misrepresentation, summary judgment on the breach-of-contract claim, which was based upon the same alleged misrepresentation, was also proper. The sole assignment of error is without merit.

We, therefore, affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HILDEBRANDT and **CUNNINGHAM, JJ.**

To the Clerk:

Enter upon the Journal of the Court on April 9, 2008
per order of the Court _____.
Presiding Judge